

RAYMOND J. GARCIA

IBLA 83-811

Decided August 31, 1983

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 113988 through A MC 114481.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

Where a mining claim was located in September 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: Raymond J. Garcia, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Raymond J. Garcia appeals the decision of June 15, 1983, wherein the Arizona State Office, Bureau of Land Management (BLM), declared the unpatented AMV 1 through 494 lode mining claims, A MC 113988 through A MC 114481, abandoned and void because no notice of intention to hold the claims or evidence of assessment work was filed with BLM in 1981 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

The claims were located September 1, 1980, and were recorded with BLM November 3, 1980. The claims are situated in secs. 6, 7, 18, 19, 30, and 31, T. 24 N., R. 11 W., and secs. 13, 21, 23, 24, 25, 26, 27, 28, and 29, T. 24 N., R. 12 W., Gila and Salt River meridian, Mohave County, Arizona.

Appellant does not state that he filed any proof of labor or notice of intention to hold the claims in 1981. He complains that the regulations are difficult to understand without a competent legal staff to advise him.

[1] Section 314 of FLPMA requires that the owner of an unpatented mining claim located on public land after October 21, 1976, must file a copy of the recorded location notice in the proper office of BLM within 90 days after location, and that prior to December 31 of each year following the calendar year in which the claim was located, he must file for record in the county office where the notice of location is recorded and in the proper office of BLM evidence of assessment work performed or a notice of intention to hold the claim. Failure to submit any of the instruments required by FLPMA within the prescribed time limits is conclusively deemed to constitute an abandonment of the claim. Evelyn Parent, 66 IBLA 147 (1982); Herschel Knapp, 65 IBLA 314 (1982); Francis Skaw, 63 IBLA 235 (1982); Charles A. Behney III, 63 IBLA 231 (1982). See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981). The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse non-compliance with the statute, or to afford claimants any relief from the statutory consequences. Francis Skaw, supra; Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

As the claims herein were located September 1, 1980, a proof of labor or notice of intention to hold the claims was required to be recorded both in the records of Mohave County, Arizona, and with BLM prior to December 31, 1981. As no filings were made with BLM, the claims were properly deemed to be abandoned.

[2] The mining law does not require performance of assessment work until the assessment year commencing at noon September 1, first succeeding the

date of location of the claims, 30 U.S.C. § 28 (1976), so appellants were not required to perform assessment work until sometime during the year running from September 1, 1981, to September 1, 1982. However, this does not obviate the necessity for compliance with section 314 of FLPMA, requiring either an affidavit of assessment work performed or a notice of intention to hold the claims to be filed both with the local recording office and with BLM on or before December 30, 1981, since 1981 is the year following the calendar year in which the claims were located. Jack Devault, 72 IBLA 324 (1983); Evelyn Parent, *supra*; Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981).

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Gail M. Frazier  
Administrative Judge

